

STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION

Before the Commissioner of Financial and Insurance Regulation

In the Matter of:

KEITH EPSTEIN,

Enforcement Case No. 09-7165

CRD No.: 1422407

Respondent.

_____ /

Issued and entered
On Oct 7th 2009
By Stephen R. Hilker
Chief Deputy Commissioner

ORDER TO CEASE AND DESIST

The Administrator (the Commissioner of the Office of Financial and Insurance Regulation) pursuant to his statutory authority and responsibility to administer and enforce the Michigan Uniform Securities Act ("MUSA"), 1964 PA 265, MCL 451.501 *et seq.*, hereby orders **KEITH EPSTEIN** to immediately **CEASE AND DESIST** from further violating the MUSA. Respondent is also notified of an opportunity to request a hearing on this matter.

I.

BACKGROUND AND FINDINGS OF FACT

1. Keith L. Epstein ("Respondent") became registered as an Investment Company and Variable Contracts Products Representative in November 1985 and worked in that capacity for certain FINRA Members, including Mutual Service Corporation (MSC), a FINRA Member, from approximately August 1991 until his termination in May 2007. CRD# 1422407. As of January 7, 2009, Epstein was not currently registered with a FINRA member.
2. Beginning in the last quarter of 2006, an elderly couple, ages 94 and 96, had invested with Respondent in mutual funds and other investment products. From January 2007 until March 2007, the couple withdrew a total of approximately \$280,500 from their

investments, which they paid to Epstein with instructions that Epstein hold the funds for distribution upon their death for the benefit of their daughter.

3. Respondent deposited the elderly couple's funds he received in an account for a business that he operated and distributed the funds to his father, his business partner, and a lawyer who was known to the couple.
4. Respondent knew or should have known that his acceptance, commingling and use of the couple's funds were activities prohibited by MSC, his sponsoring firm. Respondent's activities were a misuse of the couple's funds and constituted separate and distinct violation of NASD Conduct Rule 2110.
5. Consequently, on January 7, 2009, Keith Epstein entered in a Letter of Acceptance, Waiver and Consent with FINRA's National Adjudicatory Counsel based on the above-mentioned facts.
6. Respondent consented to the imposition of a two-year suspension from association with any member of FINRA in any capacity; and a \$10,000 fine.
7. While Epstein was also registered with MSC, an elderly man, [REDACTED] became a client of the Respondent.
8. From August 2002 through March 2004, [REDACTED] wrote checks payable to "cash", "Keith Epstein" or "Epstein & Rich" which Respondent deposited into multiple accounts that he controlled for his own personal use and benefit. In total, Respondent received at least 30 checks for a total sum of \$124,000.
9. In response to Office of Financial and Insurance Regulation's ("OFIR") inquiry, Respondent stated that [REDACTED] loaned him the money. Respondent stated that the money was not for investments and that he did not deposit the money into any business account. He admitted that [REDACTED] was a client and that he did, in fact, borrow money from him.
10. Subsequently, [REDACTED] died, and his estate inquired into the money that was transferred to Respondent. The estate filed a civil action entitled [REDACTED] v. Epstein, Case No. [REDACTED] (6th Judicial Cir. Ct. Mich., March 20, 2009) to recoup the funds [REDACTED] transferred to Respondent.
11. As a registered agent with full knowledge of this State's securities laws, the Respondent knew or should have known that borrowing money from a customer is a violation Section 204(a)(1)(W) of the MUSA.
12. More specifically, Respondent admitted to OFIR that he borrowed \$124,000 from [REDACTED], a customer. Respondent has not honored his obligation to repay the money. The estate of [REDACTED] has suffered a monetary loss in excess of \$124,000.

13. Respondent has violated Section 204(a)(1)(W), and there is an imminent threat that Respondent will continue to violate the MUSA and cause further harm to the public.
14. As a registered agent with full knowledge of this State's securities laws, the Respondent also knew or should have known that it is a violation of Section 204(a)(1)(F) of the MUSA to become subject to an order by FINRA suspending him from membership.
15. More specifically, on or about January 20, 2009, Respondent consented to a two-year suspension from FINRA membership and a \$10,000 fine.
16. Respondent has violated Section 204(a)(1)(F), and there is an imminent threat that Respondent will continue to violate the MUSA and cause further harm to the public.

II.

CONCLUSIONS OF LAW

WHEREAS, Section 201(b) of the Michigan Uniform Securities Act, states that the registration of an agent is not effective during any period when the agent is not associated with a particular broker dealer registered under this Act; and

WHEREAS, Section 204(a)(1)(F) of the Michigan Uniform Securities Act, states that the administrator may by order, if it finds the order in the public interest, deny, suspend, or revoke any registration, or censure a registrant, if the registrant is subject of an order entered by of the securities and exchange or national securities association registered under the securities exchange act 1934 suspending or expelling him or her from membership; and

WHEREAS, Section 204(a)(1)(G) of the Michigan Uniform Securities Act, states that the administrator may by order, if it finds the order in the public interest, deny, suspend, or revoke any registration, or censure a registrant, if the registrant has engaged in dishonest or unethical business practices; and

WHEREAS, Section 204(a)(1)(W) of the Michigan Uniform Securities Act, states that the administrator may by order, if it finds the order in the public interest, deny, suspend, or revoke any registration, or censure a registrant, if the registrant has while a registered agent borrowed money from a customer; and

WHEREAS, on January 7, 2009, Keith Epstein entered in a Letter of Acceptance, Waiver and Consent with FINRA's National Adjudicatory Counsel consenting to the imposition of a two-year suspension from association with any member of FINRA in any capacity; and a \$10,000 fine; and

WHEREAS, on March 19, 2009, Respondent admitted that he borrowed money from [REDACTED] his client and that the money was not for investments and that he did not deposit the money into any business account; and

WHEREAS, the Respondent, on at least two separate occasions has dealt with the public in a dishonest manner or has engaged in unethical business practices; and

WHEREAS, the Administrator finds this Order necessary and appropriate in the public interest, for the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act; and

WHEREAS, the Administrator retains the right to pursue further administrative action against the Respondent should the Administrator determine that such action is necessary and appropriate in the public interest, for the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act; and

WHEREAS, based on the foregoing, OFIR Staff has recommended that the Administrator find that the Respondent has engaged in acts and practices that violate Section 204 of the Act, MCL 451.604; and

WHEREAS, Section 408 of the Act, MCL 451.808, states that whenever it appears to the Administrator that any person has engaged or is about to engage in any Act or practice constituting a violation of any provision of this Act or any rule or order hereunder, it may in its discretion issue a cease and desist order or bring an action in a circuit court to enjoin the Act or practices and to enforce compliance with this Act or any rule or order hereunder.

III.

ORDER

Based upon the foregoing findings of fact and conclusions of law, **IT IS HEREBY ORDERED**, pursuant to Sections 204 and 408 of the Act, MCL 451.604, and 451.808, that:

THE RESPONDENT, KEITH EPSTEIN SHALL CEASE AND DESIST from violating Section 204(a)(1)(G), 204(a)(1)(W) and Section 204(a)(1)(B) of the Michigan Securities Uniform Securities Act.

PLEASE BE ADVISED that your failure to comply with the terms of this ORDER may subject you to sanctions, fines, and/or penalties, including but not limited to the following:

- (a) The imposition of additional civil penalties of not more than \$1,000 for each violation of this Act, not to exceed a total of \$10,000; and/or
- (b) Pursuant to Section 409 of the Act, MCL 451.809, any willful violation of certain provisions of the Act shall, upon conviction, result in a fine of not more than \$25,000 for each violation, or imprisonment for not more than 10 years, or both.

IV.

NOTICE OF OPPORTUNITY FOR HEARING

Section 408(b) of the MUSA, MCL 451.808, provides:

A person who has been ordered to cease and desist may file with the administrator within **15 days** after service on him or her of the order a written request for a hearing. The administrator within 15 days after the filing shall issue a notice of hearing and set a date for the hearing. If a hearing is not requested by the person or is not ordered by the administrator within 15 days, the order will stand as entered. The administrator shall hold the hearing in accordance with the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.328 of the Michigan Compiled Laws, and shall have all the powers granted thereunder. The administrator shall issue a decision sustaining, modifying, or dismissing the original order.

Should the Respondent wish to request a hearing relating to the Chief Deputy Commissioner's Order to Cease and Desist, a hearing must be requested in writing within 15 days of the issuance of this Order. The request for a hearing must be addressed to:


Dawn Kobus, Hearings Coordinator
Office of Financial and Insurance Regulation
Ottawa State Office Building, Third Floor
611 West Ottawa Street
Lansing, Michigan 48933

Please be advised that any statements made are voluntary and may be used in any proceeding that may be held. If a hearing is requested, the Respondent has the right at its expense to legal representation at the hearing. A licensed attorney must represent corporations or limited liability companies.

The Administrator retains the right to pursue further administrative action against the Respondent should the Administrator determine that such action is necessary and appropriate in the public interest, for the protection of consumers, and consistent with the purposes fairly intended by the policy and provisions of the Act.

Any other communication regarding this Order should be addressed to the Office of Financial and Insurance Regulation, Attention: Tracy Janousek, P.O. Box 30220, Lansing, Michigan 48909, Telephone: (517) 373-7199.

**OFFICE OF FINANCIAL AND
INSURANCE REGULATION**



Stephen R. Hilker
Chief Deputy Commissioner